

# **Exhibit A**

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

FILED

DEC 27 2004

JEFFREY LEWIS, on his behalf and on  
behalf of those similarly situated,

Plaintiff,

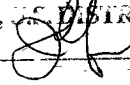
v.

POWR GUARDIAN, INC. and VON  
MILLER,

Defendant.

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Civil Action No. 3:04-CV-1743-M

CLERK OF DISTRICT COURT  
By 

**ORDER STRIKING COUNTERCLAIMS**

On this date came before the Court the Plaintiff's Motion to Strike Counterclaims, filed herein on October 1, 2004. Having considered the Motion, Response, and Reply, and the applicable authorities, the Court concludes that the Motion is meritorious, because the Fair Labor Standards Act does not contemplate the assertion by an employer of a set off or claim for excess overtime paid in the past, which is the subject of the counterclaim herein. *See generally Brennan v. Heard*, 491 F.2d 1, 4 (5th Cir. 1974), *overruled on other grounds, McLaughlin v. Richmond Shoe Co.*, 486 U.S. 128 (1988). The few exceptions identified in *Brennan* which would allow employer counterclaims do not exist here. Therefore, Plaintiff's Motion to Strike is **GRANTED**. It is therefore **ORDERED** that Defendant's counterclaims are stricken and dismissed, without prejudice to their re-assertion in another forum.

SO ORDERED this 27 day of December, 2004.

  
BARBARA M. G. LYNN  
UNITED STATES DISTRICT JUDGE